

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN R. LYNCH,)
DEWEY LYNCH,)
)
Petitioners,)
)
v.) C.M. No. 2488-K
)
BILLIE LYNN THOMPSON,)
)
Respondent.)

MASTER'S FINAL REPORT

Date Submitted: March 4, 2009

Final Report: March 5, 2009

Sean M. Lynn, Esquire, of Hudson Jones Jaywork & Fisher LLC, Dover, Delaware;
Attorney for Petitioners.

Matthew S. Lindauer, Esquire, of Smith O'Donnell Feinberg & Berl, LLP, Georgetown,,
Delaware; Attorney for Respondent.

GLASSCOCK, Master

This is a partition action brought by John R. Lynch and Dewey C. Lynch (“petitioners”) against Billie Lynn Thompson (“respondent”). The petitioners and respondent are co-tenants in a tract of land east of Milford along the Mispillion River. Pursuant to statute, a commission was appointed and recommended a division of the property in kind. Each co-tenant owns 50% of the parcel. The respondent has asked me to set aside the partition made by the commissioners, on the ground that the partition made is not a “just and fair partition” of the property. *See* 25 Del.C. §724. In the alternative, the respondent notes that the original property was divided by the commission into an eastern and a western parcel. The respondent asks me award her the western parcel, which is the property also sought by the petitioners.

Discussion

Under 25 Del.C. §724, the commission in partition, once appointed by this Court, was directed “according to the best of their skill and judgment, to go upon the premises [to be partitioned] and make a just and fair partition thereof amongst the parties in the proportions mentioned in the commission [here, 50% for petitioners and 50% for respondent].” In this case, the commissioners have done so, and the respondent concedes that they have made a division which awards each party the same amount of tillable upland and wetland. The respondent, nevertheless, maintains that the apportionment is unjust because of an attribute unique to the jointly-held property. The land in question

lies east of Milford and abuts the City along its western edge. Because of the physical dimensions of the property, a division in kind will result in an eastern and a western parcel. The highest and best use of the property—in terms of market value—is for its development within the City of Milford. The petitioners desire to develop the property. Consequently, they seek the western parcel, which they will seek to have annexed into the City of Milford. The respondent, on the other hand, may not desire to develop the property. Petitioners’s concern is that if the respondent were given the western parcel, she would not seek annexation within the City of Milford. In that case, the petitioners would not be able to successfully seek annexation of the parcel they would receive (the eastern parcel), because that parcel would not be contiguous with the City and thus not eligible for annexation.

The respondent quite correctly points out that, although the eastern and western parcels resulting from the commission’s partition are equal in size and physical attributes, the western parcel will have a special attribute—the eligibility for annexation into the City of Milford—that the eastern parcel will not. Consequently, the respondent asks me to reject the partition as unjust and have the property sold by a trustee, or to award her the western parcel herself.¹ The petitioners argue that if the respondent is awarded the

¹ The respondent, in her reply memorandum, indicates that if awarded the western parcel, she would agree to seek annexation of both parcels. In the alternative, she seeks an owelty from the petitioners in order to compensate her for the difference between the parcels, should she be forced to receive the eastern parcel. Because of my decision here, I need not reach the issue of owelty.

western parcel, she will be able to prevent the full development of the property by refusing to participate in the annexation process. Both parties cite case law indicating that this Court has the equitable power to direct that a partition in kind result in the reservation of a parcel with special attributes specifically to one of the co-tenants, as equity dictates. See In Re Real Estate of Roth, Del.Ch., No. 4320, Allen, C. (March 16, 1987)(Mem. Op.); In Re Real Estate of Marta and Acierno, Del.Ch., No. 6763, Jacobs, V.C. (March 16, 1995)(Mem. Op.).

I assume for purposes of this report that having a boundary abutting the City of Milford is an attribute of some value to the western parcel. Because the parcels are otherwise the same in extent and utility, the western parcel appears to be the most valuable. Should I award that parcel to the respondent, it may be her plan to forego the annexation that would put her parcel to its highest economic use. It is, of course, the right of an owner of property to put that property to whatever lawful use she sees fit. Such an allocation, however, would also prevent the annexation of the eastern parcel. In other words, if the property is allocated as the respondent suggests, she would have the ability to decide the extent of development not only of her own parcel, but that of the petitioners's parcel as well.

On the other hand, if the petitioners are awarded the western parcel, they intend to seek annexation and to develop the property. This would appear to give them a more valuable parcel than the respondent would receive, because her eastern parcel would not

be contiguous with the City of Milford. This advantage is illusory, however. If the petitioners seek and are not able to achieve annexation, both the eastern and western parcels are in fact of equal value. If the petitioners seek and receive annexation, the respondent's eastern parcel would at that point be, in fact, contiguous with the City of Milford and would also be eligible for annexation.

Therefore, the development potential of the property overall can be maintained, and the parties entitlement to a just and equal partition can be ensured, by the distribution of the western parcel as set out in the report of the commissioners to the petitioners, and by the eastern parcel being transferred to the respondent. My finding that such a division is equitable requires two further provisions, both of which must be incorporated in the final order here. First, the petitioners shall seek at their sole expense, and make a good faith effort to obtain, annexation of the western parcel within 12 months from the date of partition, to insure that the attribute of amenability to annexation (assuming it exists) shall be available to the respondent as well as the petitioners²; and second, a provision shall be placed in the deed to the western parcel indicating that the owners thereof, and their successors and assigns, shall not oppose annexation of the eastern parcel.

²In her Reply memorandum, Ms. Thompson indicates that she is amenable to the annexation into Milford of both parcels. If she so elects, the petitioners shall cooperate with Ms. Thompson to accomplish the annexation of both parcels.

Conclusion

The requirement of a just and equitable partition and the goal of preserving the highest economic use of the property after partition can be achieved by adopting the partition made by the statutory commissioners and awarding the western parcel to the petitioners and the eastern parcel to the respondent. Once this report becomes final, the petitioners's counsel should provide me with a form of order consistent herewith.

/s/ Sam Glasscock, III
Master in Chancery